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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,428	10/01/2003	Soren Hansen	P69160US0	5661
136	7590	05/19/2005	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			CHAPMAN, GINGER T	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,428

Applicant(s)

HANSEN ET AL.

Examiner

Ginger T Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14Jan2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The use of the trademark VELCRO has been noted in this application, page 8, lines 16 and 23. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Drawings

The drawings are objected to because character of lines, numbers and letters must be made by a process which will give them satisfactory reproduction characteristics in compliance with 37 CFR 1.84 (l). Additionally, numbers, letters and reference characters must measure at least .32 cm. (1/8 inch) in height in compliance with 37 CFR 1.84 (p)(3). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Freeman (US 5,968,024).

Claim 1: As seen in Figures 1, 5A-5D and 7A-7C, Freeman discloses a collecting bag for human body wastes (2), comprising: a bag member (8) formed by a first and a second film blank with joined edges, an inlet opening (24) being provided in one of said first and second film blanks, a discharge portion (28) defining a longitudinal direction and starting at a proximal end at a distance from the inlet opening and extending between two end sections of said film blanks to a distal end (29), wherein said second film blank is provided with an extension extending beyond a distal edge of said first film blank (32), a discharge opening (26) being formed between said

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extension (32) and the distal edge of the first film blank (28), said discharge portion being foldable and unfoldable by at least one folding in said longitudinal direction between the distal and proximal ends to bring the discharge portion from an open unfolded condition to a closed folded condition and vice versa (figs. 5A-D), and wherein a locking device (70, 72, 76) is provided at the discharge portion for locking the bag in said closed folded condition of the discharge portion (col. 6, lines 24-27), in which the collecting bag includes a first plate member positioned on the first film blank and a second plate member positioned on the extension of the second film blank (col. 6, lines 16-18), each plate member having a predetermined height in the longitudinal direction of the discharge portion between a proximal edge and a distal edge, a predetermined width in a direction transverse to the longitudinal direction (col. 6, lines 52-53), and a predetermined thickness (col. 6, line 59-65), each plate member being formed from a relatively stiff material (col. 6, line 60), and the distance (78) between the distal edge of the first plate member and the proximal edge of the second plate member being smaller than the thickness of the first plate member (figs. 5B and 5C).

Claim 2: Freeman discloses a collecting bag in which the first plate member has a larger height than the second plate member (fig. 7B).

Claim 3: Freeman discloses a collecting bag in which the first plate member has a height-width ratio in the interval from 1:7 to 1:2 (fig. 7B).

Claim 4: Freeman discloses a collecting bag in which the ratio between the heights of the first and the second plate member lies in the interval from 1:1 to 4:1 (fig. 7B).

Claim 6: Freeman discloses a collecting bag in which the second plate member is positioned on the outer side of the extension of the second film blank (fig. 7A: 80).

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Claim 7: Freeman discloses a collecting bag in which said locking device is provided close to the proximal end of said discharge portion to allow folding of said discharge portion by at least one subsequent folding following said at least one folding (col. 8, line 31; fig. 5D).

Claim 8: Freeman discloses a collecting bag (figs. 5A-5D) in which the first plate member has a larger height (70) than the second plate member (74), and in which said locking device is provided close to the proximal end of said discharge portion to allow folding of said discharge portion by at least one subsequent folding following said at least one folding (col. 8, line 31), said at least one subsequent folding being defined by the proximal edge of the first plate member (fig. 5D: 70).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (US 5,968,024) in view of Fenton (US 3,825,005).

Claim 5: Freeman does not disclose a collecting bag in which the first and/or the second plate member has an arc-shaped configuration with respect to the plane of the discharge portion. Fenton, at column 2, lines 6-8, expresses the desire to discharge the contents of the ostomy bag without contacting the fecal matter within the bag. As seen in Figure 5, Fenton teaches the first and/or the second plate member has an arc-shaped configuration with respect to the plane of the discharge portion. In particular, Fenton teaches the folded upwards (col. 5, lines 29-34) plate members (14, 15) formed of relatively stiff but flexible material (col. 4, lines 35-37) having an arc-shaped configuration with respect to the plane of the discharge portion such that the user of the bag can open the closure by squeezing the ends between a finger and thumb thereby emptying the bag of contents. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the plate members of Freeman with an arc-shaped configuration as taught by Fenton in order to provide a cleaner ostomy bag, since Fenton states at column 5, lines 42-44 that such plate members allow the user to empty the bag without contacting any of the fecal matter.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (US 5,968,024) in view of Hill (US 4,755,177).

Claim 9: Freeman does not disclose a collecting bag in which the locking device comprises foldable locking strips projecting from opposite side edges of the discharge portion. Hill, at column 1, lines 64-68, states the desirability of a closure having foldable locking strips

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projecting from opposite side edges of the discharge portion such that the locking strips do not contact the bottom opening of the bag thereby reducing contact with the fecal contents of the bag. As seen in Figure 1, Hill teaches the locking device (20) comprising foldable locking strips (22, 23) projecting from opposite side edges of the discharge portion and being provided at one surface with first locking means engageable with second locking means (col. 3, lines 61-62) provided on a surface part of said discharge portion, said second locking means being located in alignment with said locking strips after said at least one subsequent folding (col. 4, lines 3-7). Therefore, to have formed the locking device of Freeman comprising foldable locking strips projecting from opposite side edges in order to provide a cleaner ostomy bag as taught by Hill would have been obvious to one having ordinary skill in the art at the time the invention was made, since Hill states at column 2, lines 31-39 that such a modification would prevent the locking strips from coming into contact with the waste material stored within the bag.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leise, Jr. et al (US 6,726,667) in Figure 1 discloses a closure for a collection bag having arc-shaped plate members (20, 21) and foldable locking strips (22a, 22b). Falconer et al. (US 2004/0049837 A1) in Figures 6 and 10 disclose a closure for a collection bag having arc-shaped plate members (fig. 6) and foldable locking strips (fig. 10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
5/10/05



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700